

MT LEGISLATIVE HISTORY

Chapter 399 1983

Bill H 259 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 24 ✓ C

Hearing Date(s) Mar 19 ✓ C

Jan 25 ✓ C

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Date Out Jan 25 ✓ C

Mar 19 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

GRAVELY stated that a policy of registering a vehicle for the term of the insurance only would not be workable. It is not possible to have expiration dates for license plates for less than one year.

REP. SPAETH asked about "financial responsibility". It was replied the purpose of the bill was to provide for a suspension of a drivers license if insurance was not carried.

GRAVELY stated it was possible to have a valid insurance card without paying the premium. Many of the insurance companies send a card with the premium at the time of renewal. GRAVELY also stated when the bill was first passed, he sent notice to the sheriff and police department informing them it was mandatory that drivers have proof of insurance. From that date on, tickets have been issued for failure to comply. On a statewide basis, however, not all law enforcement officials request to see the proof.

REP. VELEBER asked about the increase of penalties. The sponsor replied the bill as originally drafted had a fine of up to \$500 and was considered a misdemeanor. The Senate, however, in 1981 deleted the fine. The sponsor decided to leave it up to the committee's judgement.

REP. KEYSER asked how many registered drivers there are in the state presently. MAJENUS replied approximately 500,000. He stated a driver is notified by the department if the insurance company files a form stating the insurance has lapsed.

The hearing on House Bill 210 closed.

HOUSE BILL 257

REP. RAMIREZ, sponsor, stated this bill would adopt the American Bar Association's Model Act on professional corporations and replace and repeal the present laws regulating professional corporations. In 1981 Montana adopted the ABA model corporations act. This bill is a supplement to that act. It will resolve problems that have arisen because of differences between the ABA Corporations Act and the Montana professional corporation law.

ALAN ROBERTSON, Secretary of State, supported the bill. He felt the bill is more comprehensive than present law. In

1981 Senate Bill 475 was passed. It was an update of the Model Business Corporation Act. This made Montana law the most up-to-date law in the country. Senate Bill 161 in 1981 enacted the Uniform Limited Partner Act.

The implementation of this bill goes beyond the Secretary of State's office. Most of the law concerning corporations is under Title 35. Different chapters deal with the different types of corporations. Chapter 4, Professional Service Corporations, is linked with Chapter 1, Business Corporations. The general laws are not in conflict. The two ABA Acts are designed to work together. When one of the Acts, the business corporation act, was enacted however, the other, the professional corporations act was not. Therefore, there is some conflict between the two chapters as they now exist.

EXHIBIT C, a letter concerning an out-of-state doctor who is not qualified under Montana law to do business in the state, was submitted. ROBERTSON stated there is no mechanism for a foreign professional corporation to do business in Montana. This is difficult taxwise. This problem is similar to partnerships that existed prior to a law passed in 1981. The only organization provided for then was professional partnerships.

The next problem of the current law concerns the definition of professional service. Without the expression of "specified" it is impossible to impose what the definition is. It is not clear if the professions listed under the definition are the only ones covered by the act or if that is just a partial listing. This bill includes a clear definition of what a professional service is.

The corporation's name is another problem. There are no present requirements about the words that must to be included in a business's name. A professional corporation would have to include in its name either the initials P.C. or the words professional corporation.

Another current problem concerns doctors who are the sole owner of the shares of the corporation. Title 35, chapter one, corporations, requires that each corporation have two officers--a president and a secretary--and that they may not be the same individual. Chapter 4, however, states no person can have an interest in a professional corporation if he is not a licensed professional. This, therefore, eliminates the possibility of having a spouse or employee as the other officer of

the corporation. This bill takes care of that problem by not requiring the officers of a professional corporation to be a licensed professional; and thus, gives more flexibility.

Present law requires that all members of a professional corporation have the same occupation. In other states architects and engineers are allowed to form a professional corporation together as are doctors and other medical professionals. This bill would allow merging. A doctor and an attorney, however, would be unable to merge because of their ethical standards. If they did, it would be cause for them to lose their licenses.

This bill also gives the state more authority in licensing.

The bill also expands the ability to continue operating if a partner dies. Under current law if a sole practitioner dies the corporation had to be dissolved. This bill would allow a personal representative to file amendments to make it a business corporation. A licensed professional would serve as the business was being liquidated.

Four amendments were given to the committee. EXHIBITS D through F.

SONNY HANSON, Montana Technical Council, supported the bill because section 6 would allow a variety of specialists to be incorporated together.

There were no further proponents.

There were no opponents.

REP. JENSEN asked if this would prohibit a physician who is also a lawyer to incorporate. It was replied he would have to decide which profession he would want to practice under, or inquire as to whether the Supreme Court and the Medical Board would allow him to practice as both.

REP. ADDY asked if the purpose of incorporation was to gain tax advantages and to limit liability. It was replied yes. When a company is incorporated a person who is suing may only sue the company and not the individual.

REP. RAMIREZ noted that sections 24 and 25 could be deleted from the bill as they were not appropriate for Montana. They were in the Model Act and that is why they were included in this bill.

The hearing on the bill ended.

HOUSE BILL 211

REP. JAN BROWN, sponsor, stated this bill will relate the compensation benefits paid to victims of crime to the average weekly wage as determined for purposes of workers' compensation. Section 39-171-16 defines wage.

LARRY LEWIS, Workers' Compensation Division, was in favor of the bill. LEWIS read from EXHIBIT G.

CATHY CAMPBELL, Montana Association Churches, was also in favor of the bill. CAMPBELL read testimony from EXHIBIT H.

There were no further proponents.

There were no opponents.

In closing, REP. J. BROWN stated that the fiscal note indicates the long range effect of this bill is that benefits be paid to victims of crime will increase to the state average weekly wage depending upon revenues collected.

REP. HANNAH asked how the average wage is determined. It was replied the Department of Labor computes the average wage.

REP. EUDAILY asked how often the determination of the average weekly wage is made. LEWIS replied it is made annually before the beginning of the fiscal year.

REP. VELEBER questioned the reasonable funeral and burial expenses that under the bill would be set by rule of the division. It was replied the Division would pay the going rate for burial expenses.

REP. EUDAILY asked about the subsection 6 which does not pay benefits for pain and suffering, inconvenience, physical impairment or nonbodily damage. It was replied the Division will pay medical payments for someone who is injured or damaged however the exclusions are present law.

In 1977 the maximum weekly benefit was set at \$125. An individual now will get \$125 or 66 2/3 of his wages whichever is smaller.

The hearing on the bill closed.

Exhibit D

1/24/83

HB 257

Amendment to H.B. 257 # 1

Proposed by the Secretary of State

On page 15 of the Introduced Bill, after the word "involuntarily" on line 22, insert the following:

"as provided in chapter 6 of this Title."

and strike the words "by decree of" on line 22; and also strike all of lines 23, 24 and 25 on page 15; and also strike all of lines 1 through 10 on page 16 of the introduced bill.

End of Amendment

Amendment to H.B. 2574 2

Proposed by the Secretary of State

Exhibit E
NB 257
1/24/83

On page 7 of the Introduced Bill, after the word "to"
at the end of line 8, and before the word "the" at the
beginning of line 9, insert the following:

"any assumed business name, limited partnership name,
trademark, or service mark registered or reserved with
the secretary of state or to"

End of Amendment

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Exhibit F
HB 257
1/24/83

Amendment to H.B. 257 #3

Proposed by the Secretary of State

On page 16 of the Introduced Bill, at line 24; after the word
"is":

strike the words "entitled to" and substitute in place thereof
the words "required to obtain".

End of Amendment

Amendment to H.B. 257 #4

Proposed by the Secretary of State

On page 18 of the Introduced Bill, at line 7:

strike all of lines 7 through 14 and renumber the subsequent
sub-paragraph.

End of Amendment

insurance could be obtained since the insurance is on the vehicle and not the person.

It was moved by REP. SPAETH to strike "and thereafter maintains with" on page 4, line 4; and to insert "to". All were in favor of the amendment.

REP. ADDY moved DO PASS AS AMENDED, seconded by REP. DARKO.

REP. JENSEN stated this type of law violates some right to privacy. REP. RAMIREZ stated that driving is a privilege and not a right. REP. JENSEN stated proof of insurance and who carries it is a big factor. Is there a compelling interest to do more than swear yes, the person has insurance?

REP. ADDY felt there is a legitimate state interest and that it does not need to be a compelling interest.

REP. RAMIREZ stated if it had to be a compelling interest it should be stated in the bill.

All were in favor of the motion DO PASS AS AMENDED.

REP. SEIFERT moved the committee draft a letter to the Motor Vehicle Department to change the wording on the form, when the forms they have already are depleted, to state there is a penalty not to exceed \$200 if insurance is not valid or if the statements made on the form are not true. Most people probably do not know what the cite number on the form presently means. REP. KEYSER seconded the motion.

All members were in favor of the motion.

HOUSE BILL 257

REP. RAMIREZ moved DO PASS, seconded by REP. JENSEN.

REP. RAMIREZ moved the committee adopt the amendments as presented in testimony. All were in favor of the motion.

REP. KEYSER moved DO PASS AS AMENDED.

REP. RAMIREZ stated that sections 24 and 25 are sections that are already in the Model Business Corporations Act and thus unnecessary. It was moved by REP. HANNAH to strike those sections from the bill, seconded by REP. J. BROWN.

U

Judiciary Committee
January 25, 1983
Page 11

REP. EUDAILY asked if that would slow the process down in order to get information. REP. RAMIREZ replied it is not essential to have those sections in the bill. There are professional corporations statutes presently. This provides the corporation some advantages such as tax benefits, more flexible pension plans.

All members were in favor of striking sections 24 and 25.

REP. ADDY moved DO PASS AS AMENDED, seconded by REP. EUDAILY.

All were in favor.

HOUSE BILL 246

REP. KEYSER moved DO PASS, seconded by REP. HANNAH.

REP. J. BROWN wondered how the members of the Board of Pardons felt about the bill. It was replied Mr. Burgess was supportive of the bill but was unable to testify.

REP. CURTISS stated she appreciated the governor's office's remarks. However, the Board of Pardons should be a staggered board. This board should not be subject to politics.

REP. KEYSER stated the present board is a good board. They deal with a day-by-day, week-by-week life of prisoners. The board must be one of continuity. REP. RAMIREZ agreed. If a strict governor were elected, we would not want him to put three new people on the board and turn the total philosophy around.

CHAIRMAN BROWN felt the governor should be able to appoint people to boards. This, however, should not be a case of politics. Staggered terms is a good idea.

All were in favor of the motion DO PASS.

HOUSE BILL 130

REP. JENSEN moved DO PASS. REP. SPAETH seconded the motion. (EXHIBITS M through P are requests for a new fiscal statement on the bill.

Amendments to the bill, EXHIBIT Q, were given to the committee. EXHIBIT R is how the bill would look with the amendments. EXHIBIT S is a statement of intent.

DEPARTMENT OF REVENUE

V



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

November 1, 1982

Exhibit C
1/24/83
NB 257

Alan Robertson
Chief Counsel
Secretary of State

RE: John A. Bluher

Dear Mr. Robertson:

The Department of Revenue in its dealings with Dr. John A. Bluher, DDS, MS, P.C., has discovered that the above-mentioned person is a professional corporation that is not qualified to do business in the State of Montana. Dr. Bluher is a resident of Cody, Wyoming, who maintains an office in Billings, Montana. Dr. Bluher provides services as an orthodontist one day per week in Billings, the remainder of the time he is located in Cody, Wyoming.

In his dealings with the Department of Revenue, Income Tax Division, Withholding Section, Dr. Bluher has represented himself as a "professional corporation". However, we checked with your office and discovered that Dr. Bluher, P.C., has never procured a Certificate of Authority from the Secretary of State to do business in Montana.

If you wish to take action in this matter and would like access to our files, please feel free to contact the Department of Revenue, Legal Bureau at anytime.

Sincerely,

LEGAL BUREAU

Ann Kenney

ANN KENNY
Paralegal Assistant

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STANDING COMMITTEE REPORT (1 of 2)

January 25, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **257**

First reading copy (**White** color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE AMERICAN BAR ASSOCIATION'S MODEL ACT ON PROFESSIONAL CORPORATIONS AND REPEAL THE LAWS REGULATING CORPORATIONS THAT RENDER PROFESSIONAL SERVICES; REPEALING SECTIONS 35-4-101 THROUGH 35-4-107, 35-4-201 THROUGH 35-4-204, AND 35-4-211 THROUGH 35-4-216, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **257**

BE AMENDED AS FOLLOWS:

1. Page 7, line 8.

Following: "to"

Insert: "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to"

2. Page 15, line 22.

Following: "involuntarily"

Strike: remainder of line 22, lines 23-25 on page 15 and lines 1-10 through "state" on line 10, page 16

Insert: "as provided in Title 35, Chapter 6"

3. Page 16, line 24.

Following: "is"

Strike: "entitled to"

Insert: "required to obtain"

XXXXX
DO PASS

4. Page 18, following line 6.

Strike: Subsection (2) in its entirety

Renumber subsequent subsection

5. Page 19, following line 3.

Strike: Sections 24 and 25 in their entirety

Renumber subsequent sections

AND AS AMENDED
DO PASS

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek questioned the language contained on p. 14, lines 1-8. Mr. Vralsted explained the meaning of this language.

CONSIDERATION OF HOUSE BILL 855: Represetnative Ramirez, sponsor of this bill, introduced Mr. David L. Johnson as the first proponent of HB215. Mr. Johnson explained that HB855 provides for the right of renunciation by a beneficiary, the right to make installment payments of Montana State Inheritance Tax and equitable allocation of inheritance tax among beneficiaries. Mr. Johnson testified that HB855 is an effort to make Montana's laws harmonious with the federal laws. Mr. Johnson recommended amending the bill to have an effective date of October 1, 1983, used throughout the bill, and to insert the word "if" before the word "any" on p. 24, line 23. Mr. Johnson also testified that he disagrees with the fiscal note on the bill. Mr. Johnson feels there will be no loss of income to the State and the Director's conclusion about the loss is erroneous.

PROPONENTS: Mr. David N. Niklas, a member of the Tax and Probate Section, State Bar of Montana, testified that the broadening of the right of renunciation will greatly benefit families of deceased persons. He agrees with Mr. Johnson that the fiscal effect on the state will be minimal. Mr. Niklas asked for the Committee's support of HB855.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 257: Representative Ramirez opened the hearing by stating this bill was drafted at the request of the Secretary of State.

PROPONENTS: Mr. Alan D. Robertson of the Montana Secretary of State's Office, stated that HB257 is the last in a series of bills designed to update Montana's laws regarding business. He stated that this bill is designed to alleviate some of the problems the Secretary of State's Office is having by making some organizational changes and making the laws consistent with policy. Mr. Robertson testified that the State Bar of Montana has no problem with the changes provided in HB257.

Mr. Bob Murdo, representing the Business Law Section, State Bar of Montana, submitted written testimony (see attached Exhibit "A")

and stated that this bill merely contains practical changes to the present law. Mr. Murdo stated that the Montana Corporation Business Act is not changed in any way by HB257.

Representative Ramirez then distributed a Statement of Intent (see attached Exhibit "B").

There being no further proponents, opponents or questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 24: Representative Keyser testified that this bill would provide the Social and Rehabilitation Service of Montana with the power to license youth care facilities in Montana and would hold this Department responsible for an accurate accounting of where money is being spent. Representative Keyser stated that getting an accurate accounting has been a problem in the past and, hopefully, HB24 would stop this problem. He also stated that most judicial districts do not have funds for placement of youth. Representative Keyser feels that separate budgets for these districts would allow for more accountability. He explained that HB24 would also provide for some definitions and prompt treatment of troubled youth because the bill provides for placement in a timely manner. He feels this bill will provide for better distribution of funds and simplify the process for caseworkers and probation officers.

PROPONENTS: Ms. Norma Vestre of the Montana Department of Social and Rehabilitation Services testified that her Department supports HB24. She feels this bill will solve some of the problems in the residential care system and provide the youth of Montana with better care. She urged the Committee for a do pass recommendation.

Mr. Kurt Chisholm, of the Montana Department of Institutions, testified that he feels HB24 will solve problems incurred between the Department of Social and Rehabilitation Services and the Department of Institutions. He feels there needs to be a definite decision as to who is responsible for the financing of youth programs.

Mr. Jeremiah F. Johnson, President of the Montana Probation Officer's Association, testified that he feels the bill is in good shape and clarifies who is responsible for youth care facilities.

Mr. Geoffrey Birnbaum, representing the Montana Residential Child Care Association, testified that he feels the current system is

under a contract for deed. The purchaser now is not required to be notified of certain things which affect the property. Under HB812, holders of any purchasing interest in the property would be notified of all legal actions taken on the property.

PROPOSERS: Mr. Greg Groepper of the Montana Department of Revenue, submitted written testimony (see attached Exhibit "E") and stated that when a notice is served on the Clerk and Recorder, a Realty Transfer Certificate should also be completed to notify the Assessor's Office.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

ACTION ON HOUSE BILL 467: Senator Galt moved that HB467 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 628: Senator Turnage moved that HB618 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 678: Senator Turnage moved that HB678 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 438: Senator Turnage moved that HB438 BE TABLED. This motion carried with Senator Halligan voting in opposition.

ACTION ON HOUSE BILL 705: Senator Turnage moved that Steve Brown's proposed amendments BE ADOPTED. This motion carried unanimously. Senator Turnage then made a motion that HB705 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 215: Senator Mazurek made a motion that HB215 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 855: Senator Mazurek moved that the amendments proposed by David L. Johnson BE ADOPTED. This motion carried unanimously. Senator Mazurek moved that HB855 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 257: Senator Mazurek moved that HB 257 and the Statement of Intent BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 331: Senator Galt moved that the first set of amendments to HB331 (see attached Exhibit F) BE ADOPTED. This motion carried unanimously. Senator Turnage moved that HB331 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

STANDING COMMITTEE REPORT

March 19, 19...83...

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 257
Ramirez (Mazurek)

Respectfully report as follows: That House Bill No. 257

DO PASS-

BE CONCURRED IN

H.C.